

Ross Mgt., LLC v Joe & Dena Willy's Corp.
2019 NY Slip Op 33948(U)
June 10, 2019
Supreme Court, Dutchess County
Docket Number: 50261/2017
Judge: Hal B. Greenwald
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At the term of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street, Poughkeepsie, 12601 on June 10 2019.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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ROSS MANAGEMENT, LLC

Plaintiff,

Index No.: 50261/2017

-against-

DECISION AND ORDER
(Motion Sequences 1)

JOE & DENA WILLY’S CORP.,
JOSEPH WHITE AND DENA WHITE
Defendants

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JOE & DENA WILLY’S CORP.,
JOSEPH WHITE AND DENA WHITE

Counter-Claim Plaintiffs,

-against-

ROSS MANAGEMENT, LLC.,
Counter-Claim Defendant.

-----X

Greenwald, J.

The following papers numbered 1-3 were considered by the Court in deciding Defendant’s Notice of Amended Motion to Compel and Plaintiff Notice of Motion to Compel:

<u>Papers</u>	<u>Numbered</u>
Defendant Notice of Amended Motion to Compel/ Affirmation of Devon Salts, Esq.	1
Plaintiff’s Notice of Motion to Compel/ Affirmation of Rebecca Valk, Esq./Exhibit A	2
OTHER:	
Stipulation for Discovery Schedule (NYSCEF Doc No. 70)	3
Letter from Robert Butts, Esq. dated June 1, 2019 (NYSCEF Doc No.71)	4
Letter from Devon Salts, Esq. dated June 1, 2019 (NYSCEF Doc No. 72)	5

RELEVANT BACKGROUND

Plaintiff commenced an action for breach of contract against Defendants Joe & Dena Willy's Corp, alleging that Defendants defaulted on a Promissory Note executed in May 2009, for the amount of \$18,600.00 plus interest at 8.00% per annum, that was to be paid in monthly installments, commencing May 1, 2010, with the final installment scheduled to be paid on or before May 1, 2017. Plaintiff does specify the date of the default, but states that Defendants have paid no part of the amount due pursuant to the Promissory Note. Plaintiff now seeks to have the whole unpaid amount with additional interest of 5.0% per annum above the rate defined, for a total of interest at 13% per annum, stating this is pursuant to the terms of the Promissory Note.

As for Plaintiff's second cause of action, Plaintiff states that Defendants entered into a lease agreement dated July 11, 2008, renting a portion of the premises owned by Plaintiff located at 10 Old Route 9W, Fishkill, New York 12524. Plaintiff alleges that Defendants failed to pay rent and other monetary obligations as agreed, having entered two separate stipulations, in May 2009 and April 13, 2011 to resolve such issues. Defendants vacated the premises on or about November 20, 2016, owing Plaintiff rent from March 1, 2011 through November 30, 2016 in excess of \$40,000.00. Plaintiff also seeks attorney's fees and disbursements incurred from bringing the pending action.

Defendants filed an Amended Notice of Motion to compel the production of the personal tax returns of Eleanor Ross and William Ross, as to Ross Management, LLC, for the years 2008-2016, claiming that Plaintiffs did not provide the business tax records for Ross Management, LLC, but instead provided incomplete and unverified Schedule E forms for Eleanor Ross and William Ross attached to personal income tax returns for years 2011-2017. Defendants allege that they are entitled to the production of the personal tax returns, as their defense and counterclaims, are for set-offs, side agreements for supplies and labor for repairs, that were to reduce the amounts due as rent for Defendants. Defendants also allege that since William Ross is deceased, such personal tax information is an invaluable source of information. Defendant claims it made a good faith effort to get such information from Plaintiff through discovery but without avail.

Plaintiff also filed a Notice of Motion to compel production from Defendants of any and all checks, corporate ledgers, books, records, papers, notes, bank statements, vouchers, correspondence, receipts or any other communications or documents reflecting any payments

made by any of the Defendants. Plaintiff alleges that Defendants have not produced the documents demanded, despite multiple requests.

The parties stipulated to a discovery schedule, that was uploaded to NYSCEF on or about April 19, 2019. The Stipulation states that each party were to produce bank statements for the years 2008-2016 or a statement why any document could not be produced within thirty (30) days of the date of the stipulation; depositions of all parties were to be completed by July 31, 2019 and the end date for all discovery as of August 31, 2019. An inquiry was made via email to counsel on May 23, 2019 by Christa J. Harper, Esq., Principal Law Clerk to the Honorable Hal B. Greenwald, J.S.C., to confirm whether the stipulation resolved the pending motions, and the need for conference to discuss status and further proceedings.

Counsel was directed to provide confirmation and status update by letter on or before June 1, 2019. Mackey, Butts & Wise LLP, counsel for Plaintiff, assigned Mr. Butts to this matter after Ms. Valk, the previous attorney left the firm. Mr. Butts states that his understanding is that the stipulation resolved both Motions, but Defendants have now defaulted under the terms of the discovery stipulation, as they had not produced bank statements and financial records as agreed. Defendants' counsel, Ms. Salts, states that the Defendants have produced all requested documentation to Plaintiff, but does not specify what, if any, documents have been produced to Plaintiff since the stipulation. Defendants do not seem to not acknowledge the stipulation as resolution to their pending motion. Defendants acknowledge getting an affidavit from Plaintiff's accountant regarding the Schedule E forms attached to the tax returns, but states they were insufficient and conclusory.

DISCUSSION

It is undisputed that the parties entered a stipulation regarding discovery on or about April 19, 2019, addressing the same relief requested in the two pending motions. It is well settled that the Court favors stipulations and does not cast them aside lightly and this sentiment holds true, regardless of whether the stipulation settles all issues or some issues in a pending matter. There can be no real expectation of enforcement by either party when such stipulations are not honored. *See, Hallock v. State*, 64 N.Y. 2d 224, 229-30 (Ct. of Appeals 1984).

Defendants notes that its standing motion requests Plaintiff's business tax returns. There

is no explanation given regarding the production of Plaintiff's business tax returns or lack thereof. However, Defendant seeks production of the personal tax returns of Eleanor Ross and William Ross for years of 2008-2016, as for Ross Management, LLC. Defendant claims that these documents are necessary for evaluating and calculating damages for set-offs, and for the defense and counterclaims of Defendants. However, Defendants have not shown that the information sought cannot be obtained from other sources, financial records and/or deposition testimony. A sufficient basis has not been given to compel the production of Plaintiff's personal tax returns, and to that extent, Defendant's motion to compel the production of Plaintiff's personal tax returns is denied. *See, Grossman v Lacoff*, 168 A.D. 2d 484, 485-86 (2nd Dept. 1990).

As Plaintiff deems the issues pertaining to its pending motion resolved, but stating the Defendants are now in default. The parties have agreed to have disclosure completed by August 31, 2019. However, neither party has articulated the issues, if any in obtaining the information sought. To assist the parties and the Court moving this matter to conclusion, a conference is now scheduled for July 30, 2019 at 9:30 a.m. The parties shall submit to the Court, by letter, the discovery obtained, and the outstanding discovery issues, with specificity as to its relevance to the pending matters and the issues in obtaining or providing the requested information, on or before July 12, 2019.

Accordingly, it is hereby,

ORDERED, that Plaintiff's Motion to Compel is deemed resolved by Stipulation of April 19, 2019; and it is further

ORDERED, that Defendant's Motion to Compel is **denied**; and it is further

ORDERED, that the parties shall **submit to the Court, by letter**, the discovery obtained, and the outstanding discovery issues, with specificity as to its relevance to the pending matters and the issues in obtaining or providing the requested information, **on or before July 12, 2019**; and it is further

ORDERED, that the parties and their respective counsel shall **appear in Court for conference on July 30, 2019 at 9:30 a.m.;**

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this Court.

Dated: June 10 2019
Poughkeepsie, New York

ENTER:



Hon. Hal B. Greenwald, J.S.C.

CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to the Honorable Hal B. Greenwald's Chambers, please do not submit any copies. Please submit only the original papers.